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Nos. 597, 654, 655 & 656
Motion to advance.

Office Supreme Court U.S.
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APR 24 1902
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Apr. 24, 1902.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, etc. } No. 597.

THE UNITED STATES, APPELLANT,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and Edwin F. Stovell, captain, etc., intervenor. } No. 654.

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," etc., and Edwin F. Stovell, captain, etc., intervenor. } No. 655.

EDWIN F. STOVELL, CAPTAIN, ETC., INTERVENOR, appellant,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and the "Don Juan de Austria," "Isla de Cuba," "Isla de Luzon," etc. } No. 656.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT, v. WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, etc.	No. 597.
THE UNITED STATES, APPELLANT, v. GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and Edwin F. Stovell, captain, etc., intervenor.	No. 654.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., v. THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," etc., and Edwin F. Stovell, captain, etc., intervenor.	No. 655.
EDWIN F. STOVELL, CAPTAIN, ETC., INTERvenor, appellant, v. GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and the "Don Juan de Austria," "Isla de Cuba," "Isla de Luzon," etc.	No. 656.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

Now comes the Solicitor-General, in behalf of the United States, with the concurrence of all the counsel representing the various parties to the above-entitled

causes, and moves the court to advance these causes upon the docket, and to set them down to be heard together at as early a date as may suit the convenience of the court, for the following reasons:

(1) The above appeals have been taken from decrees of the supreme court of the District of Columbia, holding a special term as a district court of the United States, entered July 31, 1901, and November 5, 1901, respectively, in the respective prize causes of *William T. Sampson, rear-admiral, U. S. Navy, etc.*, v. *The Spanish vessel of war "Infanta Maria Teresa," etc.*, and of *George Dewey, Admiral U. S. Navy, etc.*, v. *The Spanish vessel of war "Don Juan de Austria," etc.* The questions of law involved in the appeals of the *United States* v. *Sampson*, No. 597, and *The United States* v. *Dewey*, No. 654, are practically the same, while the case of *Dewey* v. *The "Don Juan de Austria," etc.*, No. 655, is practically a cross appeal, relating to certain other legal questions not involved in the Sampson case. The case of *Edwin F. Stovell, intervenor*, v. *George Dewey, etc.*, No. 656, concerns the right of certain parties to share in the fund to be distributed.

(2) All these appeals relate to property alleged to have been captured at the battles of Manila Bay and off Santiago nearly four years ago. The delay in reaching this court has been inevitable, owing to the character of the causes and the amount of evidence which had to be procured, but it has been none the less a hardship to the officers and men concerned to have their claims for prize money remain so long un-

settled. This is especially true in the Dewey case, where it is conceded that a portion of the prize money claimed should in any event be recovered.

(3) Owing to the fact that the term of service of enlisted men in the Navy is comparatively short, and that those who leave the service rarely remain in any one place, but make voyages all over the world in pursuance of their calling, it is difficult for the Navy Department to keep track of them, so that delay in the adjustment of claims for prize money increases the work of the Department, and sometimes even makes it impossible to find the men to whom prize money is due, or their representatives in case of their death.

(4) The amount involved herein is between $1,500,000 and $2,000,000, and those directly interested in its distribution number between 3,000 and 4,000 persons.

(5) The cases are of general public interest.

JOHN K. RICHARDS,
Solicitor-General.

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Clerk.

No. 273.

Motion for substitution &c.

IN THE

Supreme Court of the United States.

October Term, 1902.

Filed Oct. 29, 1902.

THE UNITED STATES, Appellant, vs. WILLIAM T. SAMPSON, Rear-Admiral, U. S. Navy, etc.	No. 273.

Motion for Substitution as Appellees (Libellant.)

Now come Robley D. Evans, Rear-Admiral, U. S. Navy; Henry C. Taylor, Rear-Admiral, U. S. Navy; Charles S. Cotton, Rear-Admiral, U. S. Navy; French E. Chadwick, Captain, U. S. Navy; Joseph G. Eaton, Captain, U. S. Navy; Lucien Young, Commander, U. S. Navy; and Alexander Sharp, Jr., Lieutenant-Commander, U. S. Navy, and show the court:

I. On July 3, 1898, the petitioner Robley D. Evans was the commanding officer of the U. S. S. *Iowa*, which participated in the captures that are drawn in question in this cause, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner Henry C. Taylor was the commanding officer of the U S. S. *Indiana*, which participated in the said captures, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner

Charles S. Cotton was the commanding officer of the U. S. S. *Harvard*, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner French E. Chadwick was fleet captain or chief of staff of the late Rear-Admiral William T. Sampson, U. S. Navy, then Commander-in-chief of the U. S. naval force on the North Atlantic Station, to which the U. S. vessels herein named were attached, and is the only surviving fleet officer of that force. He was also the commanding officer of the U. S. flagship *New York*, which participated in the said captures, and makes this petition in his own behalf and in behalf of the officers and enlisted men of the said fleet who participated in the said captures, including those of his said command. The petitioner Joseph G. Eaton was the commanding officer of the U. S. S. *Resolute*, and makes this petition in behalf of the officers and enlisted men of his said command. The petitioner Lucien Young was the commanding officer of the U. S. S. *Hist*, which participated in the said captures, and makes this petition in his own behalf and in behalf of her officers and men. The petitioner Alexander Sharp, Jr., was the commanding officer of the U. S. S. *Vixen*, which participated in the said captures, and makes this petition in his own right and in behalf of her officers and men.

II. These petitioners have consented to the substitution of Elizabeth B. Sampson, Administratrix of William T. Sampson, late a Rear-Admiral of the U. S. Navy, deceased, as *appellee* (libellant), in this cause, but in the event that this honorable court shall consider it neces-

sary for an officer or officers of the Navy to appear herein as *appellees* (libellant), they pray the court that they or any one or more of them may be admitted as party or parties *appellee* (libellant) to prosecute the cause on his or their own behalf and on behalf of all others concerned therein and entitled to participate in any prize money which may be awarded to the captors.

III. These petitioners do severally and jointly agree that if they, or any one or more of them, are admitted as parties libellant to prosecute this cause, they will hold themselves responsible for any costs which may be awarded therein against them.

JOHN SIDNEY WEBB,
Of counsel for Rear-Admiral Robley D. Evans, U. S. Navy.

GEORGE A. KING,
WM. B. KING,
Of counsel for Rear-Admiral Henry C. Taylor, Commander Lucien Young and Lieutenant-Commander Alexander Sharp, Jr., U. S. Navy.

WILLIAM E. HARVEY,
Of counsel for Rear-Admiral Charles S. Cotton and Captain Joseph G. Eaton, U. S. Navy.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Of counsel for Captain French E. Chadwick, U. S. Navy.

I assent to the foregoing action.

HENRY M. HOYT,
Assistant Attorney General.

Memorandum in Support of Motion.

The fleet which took part in the engagement off Santiago de Cuba on July 3, 1898, was under the command of Rear-Admiral William T. Sampson, U. S. Navy, the libellant. The fleet captain or chief of staff was Captain French E. Chadwick. There were no other fleet officers. Under the law and regulations for the government of the Navy, provision is made for the officers of fleet commander and fleet captain. These officers alone are entitled to share in all prizes taken by any vessel or vessels of the fleet, and this right is in nowise dependent upon presence of either at the time of the capture. The incumbent of neither office has any pecuniary concern in the distribution of the prize money among various vessels of the fleet asserting claims thereto. (*R. S. U. S. Sec., 4630*). This undoubtedly was the reason which led the courts in earlier cases to adopt the practice of permitting the fleet commander to file a libel in his own behalf and in behalf of all of his officers and men who might appear to be entitled to a distributive share of the prize money. (*Farragut* vs. *U. S., 22 Wall., 406*). In the absence of the fleet commander, the fleet captain or chief of staff is the only person who possesses this qualification.

In the engagement, Rear-Admiral Winfield S. Schley had command of a squadron or division of the United States fleet. His command did not extend to certain of the vessels which participated, and under the statute, his right to share in prizes is limited to captures made by vessels of his division. He is not now qualified to represent all officers and men who took part in the en-

gagement off Santiago, because he did not have command of the entire fleet on that occasion.

If the court considers that one officer of the Navy should be selected to represent all officers and men concerned, as the libellant in this cause, the choice should fall upon Captain Chadwick. If, however, the court is of the opinion that several officers may with propriety be named as parties libellant, it is suggested that these petitioners, each one of whom had command of a vessel which participated in the said engagement, may be selected; each to appear in his own behalf and in behalf of the officers and men of his command and that of all others concerned in the outcome of the cause.

These petitioners are represented by counsel, and, if admitted to appear in the cause as parties thereto, they will jointly and severally stand answerable for any costs which may be awarded against them therein.

The determination of this question is respectfully submitted to the Court.

JAMES H. HAYDEN,
Of Counsel for Libellant (*Appellee*).

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No. 273.

Petition for substitution &c.

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Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, Appellant,

vs.

WILLIAM T. SAMPSON, Rear Admiral U. S. Navy, etc.

No. 273.

Petition for Substitution as Appellee (Libellant).

Now comes Elizabeth B. Sampson and shows the court that William T. Sampson, late a Rear Admiral of the U. S. Navy, and the libellant named in the above-entitled cause, departed this life on the 6th day of May, 1902, which fact was suggested to the court by the Attorney-General on the 19th day of May, 1902, and that the petitioner has been appointed administratrix of the estate of the said William T. Sampson: Wherefore the

petitioner prays that she may be substituted in the said cause as appellee (libellant) and authorized to prosecute the same.

JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Of Counsel for Elizabeth B. Sampson.

We assent to the forgegoing petition.

HENRY M. HOYT,
Assistant Attorney-General for the United States.

JOHN SIDNEY WEBB,
Of Counsel for Rear Admiral Robley D Evans, U. S. Navy.

GEORGE A. KING,
WM. B. KING,
Of Counsel for Rear Admiral Henry C. Taylor, Commander Lucien Young, and Lieutenant-Commander Alexander Sharp, Jr., U. S. Navy.

MCCAMMON & HAYDEN,
Of Counsel for Captain French E. Chadwick, U. S. Navy.

BRIEF IN SUPPORT OF THE MOTION.

On July 31, 1899, the libel herein was filed in the court below by Rear-Admiral William T. Sampson. He sued as an individual and also as the Commander-in-Chief of the United States Naval force on the North Atlantic Station. He appeared in his own behalf and in behalf of all the officers and enlisted men of the United States fleet under his command, which, on July 3, 1898, fought a naval engagement with a Spanish fleet off Santiago de Cuba, and therein captured property which is claimed as prize in this suit. In this respect the practice adopted in earlier prize cases was followed. (*Farragut* vs. *U. S.*, 22 Wall., 406.) As the libellant in the cause, Admiral Sampson assumed the responsibilities incident to its prosecution, including responsibility for such costs, if any, as might be awarded against the libellant. If such costs should be awarded, his estate would be liable for the amount. It appears, therefore, that his personal representative is the proper person to substitute for him, as the libellant in this cause.

Counsel assenting to this motion represent the fleet captain or chief of staff of the late Rear-Admiral Sampson; also the commanding officers of the U. S. S. *New York*, *Iowa*, *Indiana*, *Hist*, and *Vixen*, all of which participated in the said engagement and the captures made therein.

JAMES H. HAYDEN,
Of Counsel for Elizabeth B. Sampson,
Administratrix.